

ESTTA Tracking number: **ESTTA776018**

Filing date: **10/11/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	General Mills, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	Number One General Mills Boulevard Minneapolis, MN 55426 UNITED STATES		

Attorney information	William Rava Perkins Coie LLP 1201 Third Avenue, Suite 4900 Seattle, WA 98101 UNITED STATES wrava@perkinscoie.com, tbrandon@perkinscoie.com, dockettrade-mark@perkinscoie.com Phone:206-359-6338
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### Applicant Information

Application No	86917338	Publication date	09/13/2016
Opposition Filing Date	10/11/2016	Opposition Period Ends	10/13/2016
Applicant	THAT'S IT NUTRITION, LLC 16106 Hart Street Van Nuys, CA 91406 UNITED STATES		

### Goods/Services Affected by Opposition

Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: DEHYDRATED FRUIT SNACKS COVERED IN CHOCOLATE
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### Grounds for Opposition

The mark is merely descriptive	Trademark Act Section 2(e)(1)
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Attachments	2016-10-11 Notice of Opposition.PDF(15442 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/William C. Rava/
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Name	William Rava
Date	10/11/2016

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GENERAL MILLS, INC.,

Opposer,

V.

THAT’S IT NUTRITION, LLC,

Applicant.

Opposition No.:

NOTICE OF OPPOSITION

Mark: THAT’S IT BITES

Serial No.: 86,917,338

General Mills, Inc. (“General Mills” or “Opposer”) believes that it will be damaged by the registration by That’s It Nutrition, LLC. (“Applicant”) of the mark THAT’S IT BITES (the “Applied-for Mark”) in International Class 30, and covering those goods (“Applied-for Goods”) listed in application Serial No. 86,917,338 (“Application”), and hereby opposes the Application. As grounds for its notice, Opposer alleges as follows:

**I. PARTIES**

1. Opposer is a Delaware corporation, with its principle place of business located at Number One General Mills Boulevard, Minneapolis, Minnesota.

2. Applicant is a California limited liability company, will a place of business in 16106 Hart Street, Van Nuys, California.

**II. THE APPLICATION**

3. Application Serial No. 86, 917,338 was filed on an intent-to-use basis on February 23, 2016, by Applicant for the mark THAT’S IT BITES in International Class 30 for use in connection with “Dehydrated fruit snacks covered in chocolate.” The Application disclaims any exclusive right to use “BITES” apart from as shown in the Application. The Application was published for opposition on September 13, 2016.

### III. CLAIMS

5. Applicant markets and sells a line of all-fruit snack bars using the trademark “THAT’S IT” as reflected Registration Nos. 4035020 and 4638221, which mark literally describes the essential nature of its products.

6. In or about 2016, Applicant added a new product line, called “THAT’S IT BITES” as reflected in the Application, which are fruit truffles in various flavors covered with dark chocolate. The Applied-for Mark literally describes the essential nature of this new product line.

7. General Mills manufactures and distributes healthy snack bars under the LÄRABAR® mark. General Mills also manufactures and distributes LÄRABAR Bites, which are bite-sized versions of the bars, and are made with six or fewer simple ingredients.

8. In connection with the marketing and sale of its LÄRABAR and LÄRABAR Bites products, General Mills has used the phrase “That’s It” not as a source indicator but in its everyday-definition sense to mean “nothing more.” General Mills’ use of the phrase “That’s It” has been purely descriptive and always in its primary, definitional sense to emphasize the few, simple, healthy ingredients contained in the LÄRABAR and LÄRABAR Bites products.

9. Applicant has challenged General Mills’ use of the phrase “That’s It” in the United States District Court for the Central District of California, Case No. 2:16-cv-02871 SVW (GJS) (“District Court Litigation”), alleging trademark infringement and seeking damages and an injunction to prevent General Mills from using the phrase “That’s It.”

10. Applicant’s use of the Applied-for Mark in connection with the Applied-for Goods directly and immediately conveys a characteristic and/or nature of the Applied-for Goods, and the Applied-for Mark does not have secondary meaning in connection with the Applied-for Goods. Applicant proposes to use the phrase “that’s it” in a purely descriptive manner and in its in its primary, definitional sense.

11. The registration of the Applied-for Mark in the Application would prevent General Mills from using a common, everyday phrase for its common, everyday meaning. The registration of the Applied-for Mark in the Application could also subject General Mills to liability in the District Court Litigation, and could support statutory rights for Applicant in violation and derogation of General Mills' right to use a descriptive phrase in its descriptive sense.

12. By reason of all of the foregoing, General Mills would be greatly damaged by the registration of the Application for the Applied-for Goods.

#### **IV. REQUEST FOR RELIEF**

WHEREFORE, Opposer requests that registration of Application Serial No. 86,917,338 be denied.

#### **V. FEES**

The \$300.00 fee for this Notice of Opposition has been electronically submitted.

DATED: October 11, 2016

Respectfully submitted,

Perkins Coie LLP

By: s/William C. Rava/

William C. Rava  
1201 Third Avenue, 49th Floor  
Seattle, Washington 98101  
Phone: (206) 359-8000

Attorneys for Opposer General Mills, Inc.

#### **CERTIFICATE OF SERVICE**

I hereby certify that this Petition for Cancellation is being deposited with the United States Postal Service with sufficient postage as first class mail on October 11, 2016, in an envelope addressed to Respondent's attorney of record at:

THOMAS I. ROZSA  
ROZSA LAW GROUP LC  
18757 BURBANK BOULEVARD, SUITE 220  
TARZANA, CALIFORNIA UNITED STATES 91356-3346

Signature s/Tracy A. Brandon/  
Print Name: Tracy A. Brandon